LIBRARY
UPREME COURT, U. S.
FEB 29 1968
JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1967

No. 517

PHIL A. ST. AMANT,
Defendant-Relator,

versus

HERMAN A. THOMPSON,
Plaintiff-Respondent.

Appeal from the Supreme Court of the State of Louisiana.

ORIGINAL BRIEF ON BEHALF OF DEFENDANT-RELATOR.

MOSES C. SCHARFF,
Whitney Bank Building,
New Orleans, Louisiana.

RUSSELL J. SCHONEKAS,
GIBSON TUCKER, JR.,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 517.

PHIL A. ST. AMANT,
Defendant-Relator,

versus

HERMAN A. THOMPSON,
Plaintiff-Respondent.

Appeal from the Supreme Court of the State of Louisiana.

ORIGINAL BRIEF ON BEHALF OF DEFENDANT-RELATOR.

TO THE HONORABLES, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

1.

CITATION TO OFFICIAL REPORT OF OPINION DELIVERED IN THE COURT BELOW.

The opinion rendered by the Court below is reported in 250 La. 405, 196 So.2d 255; and 184 So.2d 314 (La. App. 1st Cir., 1966).

2.

GROUNDS FOR THE COURT'S JURISDICTION.

The decree sought to be reviewed was rendered and entered on February 20, 1967, with a refusal of rehearing on March 27, 1967. By motion granted on June 26, 1967, the time for filing this petition was extended to and including August 19, 1967. The jurisdiction of this Honorable Court is invoked under Article III, Section 2, the First and Fourteenth Amendments of the Constitution of the United States, 28 USCA 1257 (3).

3.

CONSTITUTIONAL PROVISIONS INVOLVED.

a. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances." United States Constitution, First Amendment.

b. ". . .No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. . . ." United States Constitution, Fourteenth Amendment, Section 1.

4.

QUESTIONS PRESENTED FOR REVIEW.

Were certain statements by Petitioner, Phil A. St. Amant, concerning a public official and communicated over a television program made with *actual malice,* i.e., with knowledge, that they were false or in reckless disregard of whether they were false or true, so as to allow recovery by this public official in a civil action for libel and slander?

MAY IT PLEASE THE COURT:

5.

STATEMENT OF THE CASE.

This matter involves a suit for damages by Captain Herman A. Thompson, a deputy sheriff of the Parish of East Baton Rouge, State of Louisiana, against Phil A. St. Amant, who at the time the alleged incident occurred, was a qualified candidate for United States Senator from the State of Louisiana. During his political campaign, petitioner appeared on a Baton Rouge television station and made remarks about the respondent. Copies of petitioner's statement were also made available to the press which publicized them. Thompson alleged in his original petition that these remarks were false, slanderous, libelous and malicious (Record P. 16) (App. Pp. 4-9); that they were intended to belittle, degrade and ridicule respondent Thompson and defame, slander and libel his good

name, reputation and character before his friends and the general public. (Record P. 17). (App. P. 5). Petitioner St. Amant, in his answer, admitted the statements, but claimed that they were not slanderous and were not made with malice (Record P. 19) (App. Pp. 10-17). In the alternative, St. Amant pleaded the absolute defense of truth of these statements. (Record P. 22) (App. P. 15). Judgment was rendered in the District Court of the State of Louisiana for Thompson in the sum of five thousand and no/100 ($5,000.00) dollars on May 13, 1964.

The Louisiana Court of Appeals, First Circuit, reversed the trial court's decision and held for the petitioner herein, St. Amant, dismissing his suit. Writs of certiorari and review were applied to and granted by the Supreme Court of Louisiana. On February 20, 1967, the Louisiana Court of Appeal was reversed and the judgment of the trial court was reinstated. Rehearing was denied by the Supreme Court of Louisiana on March 27, 1967. Petition for writ of certiorari was granted by this Honorable Court on January 15, 1968 and docketed as No. 517, October Term, 1967.

The sole question presented in this brief is whether the remarks admittedly made by St. Amant were made with actual malice, i.e., they were made with knowledge of falsity or in reckless disregard of whether they were true or false. The constitutional safeguards of freedom of speech were offered as a defense in light of the recent decision, *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed. 2d

686 (1964) (Record P. 37) (App. P. 154). The trial court refused a new trial, stating that the respondent Thompson was a public official and the rule of actual malice applied to him (Record P. 38) (App. P. 158). However, in passing on the question, the trial court found actual malice in the statements of petitioner St. Amant and held him liable (Record P. 39) (App. P. 158). The Court of Appeal, First Circuit, reversed the trial court, finding that the respondent, Thompson, was a public official (Record P. 49) (App. P. 184), and the actual malice rule of the *New York Times* case *supra* applies.

The Supreme Court of Louisiana rendered a decision reversing the Louisiana Court of Appeal, First Circuit, and reinstating the trial court on the grounds that the constitutional safeguards of free speech are preserved in a civil action by a public official against his alleged slanderer (Opinion of Supreme Court, P. 9) (App. P. 195). Applying the New York Times rule, the Louisiana Supreme Court found the actual malice necessary to form the basis of such a suit, and concluded that the First and Fourteenth Amendments do not provide protection in this case (Opinion of the Louisiana Supreme Court P. 14) (App. P. 200).

ARGUMENT.

Since at all levels the courts of Louisiana have concluded that Respondent, Thompson, was a public official, the case falls under the aegis of the New York Times rule of libel. The only disputed fact, is that

these statements made by petitioner were uttered with actual malice or with reckless disregard of whether they were true or false. It is respectfully submitted that these statements were not made maliciously, and therefore under the public official rule of the *Times* case, the First and Fourteenth Amendments do guarantee the protection and privilege of free speech.

The question can be resolved only by a close examination of the record. Is there actual malice presented or did the Court wrongfully imply it? The statements referred to were in the form of an affidavit executed by one Albin, a local union member, and read by petitioner St. Amant over television. The pertinent parts of the statement are as follows:

> "Now, we knew that this safe was gonna be moved that night, but imagine our predicament, knowing of Ed's connections with the Sheriff's office through Herman Thompson, who made recent visits to the Hall to see Ed. We also knew of money that had passed hands between Ed and Herman Thompson * * * from Ed to Herman. We also knew of his connections with State Trooper Lieutenant Joe Green. We knew we couldn't get any help from there and we didn't know how far that he was involved in the Sheriff's office or the State Police office through that, and it was out of the jurisdiction of the City Police (Opinion of the Louisiana Supreme Court P. 3)." (App. Pp. 187-188.)

The facts presented therein were substantially true. Thompson admitted he had been a frequent visitor to the Union Hall and was a close friend of the labor leader Partin (T.T. P. 61) (App. Pp. 72-73). He did receive certain monies from Partin for various causes (T.T. P. 63) (App. P. 74), but insisted they were all checks, not cash (T.T. P. 68) (App. P. 79). He even admitted that the payments, for whatever reason given, were tendered in envelopes, and that he never opened them but brought them in and gave them to the Sheriff's secretary. (T.T. P. 71) (App. Pp. 139-140). Thompson even testified that Partin attempted to give him certain rewards for solving cases around the Union Hall (T.T. Pp. 66-67) (App. P. 78), which offer was rejected.

Thus, from the statement that, "We also knew of money that had passed hands between Ed and Herman Thompson . . . from Ed to Herman" (Opinion of Louisiana Supreme Court P. 3) (App. P. 188), we can conclude from the facts in the testimony that this is a true statement. Monies did change hands, and the distinction made by the Louisiana Supreme Court as to whether it was cash or checks (Opinion of Supreme Court P. 6) (App. P. 192) seems to be of no relevance. The affidavit merely said money changed hands, and checks are money. The Louisiana Supreme Court counted heavily on Respondent Thompson's testimony, an interested party, and ignored and discounted the testimony of Mrs. Marjorie Ann Smith, a Teamster's secretary and an

uninterested party, who stated that she had seen cash pass between Partin and Thompson. (Opinion of Sup. Ct. Pp. 6-7) (App. P. 192). There seems to be no reason to disbelieve her testimony. The Supreme Court based this decision on the fact that petitioner St. Amant did not have corroborating testimony from the other secretary who supposedly saw the transfer, one Jeanette Fletcher. (Sup. Ct. Opinion P. 12) (App. P. 198). But there seems to be no legal duty on St. Amant to have an abundance of witnesses testifying to the same thing. The situation reduces itself to Thompson saying he received no cash and Mrs. Smith saying he did. Thompson called no one to support his story. He might have called his friend, Partin, but he did not. And yet the Court used this as a basis for dismissing Mrs. Smith's testimony as being untrue. The Court of Appeal and the trial court did not doubt her veracity.

However, the undisputed fact that some type of money did change hands still remains, and in this sense, Albin's affidavit is correct. And so was petitioner's reading on television. As for what purposes this money changed hands is a matter of individual opinions. Albin expresses the opinion that this money that changed hands was union money and that Partin withdrew it for his own use. He also offered that because of Partin's connection with some State Trooper (he mentioned someone else, not Thompson), there would be no assistance from State

Police in investigating of union officer activities. Albin concluded that since Partin and Thompson were close friends, no help could be expected from the Sheriff's office, but it must be remembered these are deductions and opinions of Albin, not statements of fact. The only actual truthful fact was the money changing hands. The rest were Albin's own personal deductions and conclusions therefrom. If Albin was incorrect in his deductions and opinions, this, under the *New York Times Co. v. Sullivan* rule, would not have warranted recovery even as to Albin, less St. Amant, since the First Amendment's free speech, as applied to the States by the Fourteenth, limits a jurisdiction's power to award damages for civil libels in matters involving public officials. Recovery can only be had where the injured official proves actual malice, i.e., the publication is made with knowledge that it is false or in reckless disregard of whether it was false or true. Libel recovery under the *New York Times* rule is authorized by public officials for defamatory remarks when the remarks are known to be false. But the free expression of opinion by its very nature is believed to be true by the expressor. One can be held libel for wanton disregard for truth, but not for mistaken opinion. The fact that money changed hands being true, the circumstance under which it did change hands, and Albin's implying that the money was for a payoff would not give legal ground for holding the statement actionable. This was opinion and comment, no matter how erroneous,

based on fact, and to hold such comment libelous is to deny, according to the *New York Times* case, the constitutional right of free speech. By holding as they did, the Louisiana Supreme Court did indeed do just that.

The analysis applies to Albin, the author of the statement. But St. Amant was the party sued. However, there is no evidence that St. Amant was actuated by malice toward Thompson. He secured a sworn affidavit from a union member about activities which in the opinion of this member, Albin, were shady, to say the least. No proof was shown that petitioner St. Amant knew that any fact stated in the affidavit was false or that any conclusion drawn from these facts were false.

The opinion of the Louisiana Supreme Court did conclude that St. Amant uttered these statements in a reckless disregard as to whether they were true or false (Sup. Ct. Opinion P. 12) (App P. 198). But the Court said this was the mistake for St. Amant. He should have checked more closely the veracity of the statements, and investigated as to the truth of the affidavit. And since he didn't do this before he made the statements on the broadcast, he was recklessly disregarding this truth or falsity and thus malice is imputed resulting in liability. This equates ignorance of falsity with knowledge of falsity and imputes malice from both. This is contrary to the *Times* case. *Curtis Publishing Co. v. Wallace Butts*, 87 S. Ct. 1975, and *Garrison vs. State of Louisiana*, 379 U.S. 64, 85 S.Ct. 209.

In *New York Times Co. v. Sullivan,* a qualified privilege is lifted and liability attaches. Erroneous statements, honestly made, about a public official, are protected under the First and Fourteenth Amendments from civil liability. And yet in this case, the Louisiana Supreme Court places a greater burden on the petitioner St. Amant, and *implies* actual malice since he did not satisfactorily check the source of the statement. St. Amant testified that he gave no thought to Thompson when he made his statement (T.T. P. 126) (App. P. 51). He read a sworn statement of a third party. The Louisiana Supreme Court interpreted this as being a reckless error needed to impute liability.

It is submitted that at worst for petitioner herein, these were erroneous statements honestly made, and that knowledge of falsity and ignorance of falsity cannot be held to be one and the same.

There is no law or imposed legal duty to check, further than did petitioner, such a statement to avoid malice or recklessness. Failure to check a source may perhaps be considered negligent, but negligence and malice are not synonymous, just as a negligent homicide and murder requiring malice aforethought are not the same.

WHEREFORE, petitioner respectfully prays that the judgment of the Supreme Court of Louisiana be reversed by this Honorable Court and that the judgment of the Court of Appeals, First Circuit of the

State of Louisiana, be reinstated, dismissing the suit of Herman A. Thompson, plaintiff-respondent, at his costs.

Petitioner further prays for such other and further relief in the premises that this Court may deem proper and just.

Respectfully submitted,

MOSES C. SCHARFF,
Whitney Bank Building,
New Orleans, Louisiana 70112.

RUSSELL J. SCHONEKAS,
GIBSON TUCKER, JR.,
Of Counsel.

CERTIFICATE.

I, the undersigned, of counsel for defendant-relator hereby certify that I have served a copy of the foregoing brief upon Robert L. Kleinpeter, Attorney for respondent, at P.O. Box 2828, Baton Rouge, Louisiana, by mailing a copy thereof, postage prepaid to him at said address.

Attorney for Defendant-Relator.